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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,422	02/26/2004	Stefan O. Dick	P-1021A	4744

7590 06/10/2004

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EXAMINER	
REIS, TRAVIS M	

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/787,422	DICK ET AL.	
	Examiner	Art Unit	
	Travis M Reis	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-21 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 26 February 2004 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 20040226.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 & 3-20 of U.S. Patent No. 6,698,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,698,378 contain all the limitations stated in the claims of the present application. Since the claims of the present application are therefore a broader version of the claims disclosed in U.S. Patent No. 6,698,378, these claims stand rejected under obviousness-type double patenting.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, & 4-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fryar (U.S. Patent 3597976) in view of Martz (U.S. Patent 5061258).

Fryar discloses an irreversible indicator card and process of manufacturing said card, comprising an intermediate carrier member (3), containing one or more holes (8) passing through the intermediate carrier member, a clear first outer layer (1) secured to a front side of the intermediate carrier member by adhesive (col. 2 lines 68-69), a plurality of deliquescent salts (6), (such as a dimethyl Itconate, which is a white colored material), contained within the holes in the intermediate carrier member; each of which liquefies at a different predetermined level and contains no dye; a colored (black numbers 7), absorbent blotting sheet (4) (col. 3 lines 35-36) placed against a back side of the intermediate carrier member (col. 3 lines 48-51), which material covers the holes in the intermediate carrier member, and a second outer layer (2) coated with an adhesive material (col. 3 lines 8-9), secured to the back side and completely covering the intermediate carrier member, which covers the colored, absorbent sheet material and secured at two edges to the first layer, wherein the color of the absorbent sheet material shows through the openings in the intermediate carrier member and the clear, first outer layer when the deliquescent material melts and is absorbed by the absorbent blotter sheet (Figures 1-6).

With respect to the preamble of the claims 1, 2, & 4-21: the preamble of the claim does not provide enough any patentable weight because it has been held that a preamble is

denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. ***Kropa v. Robie***, 88 USPQ 478 (CCPA 1951).

Fryar does not disclose that the clear first outer layer is water vapor permeable with a vapor transmission rate greater than 1 gram per square meter per day.

Martz discloses transparent water vapor permeable dressing having a clear, water permeable layer (24)(Figure 3) with a vapor transmission rate greater than 250 grams per square meter per day at a desired humidity of 80% in order to insure that the skin of the patient wearing the dressing can breathe properly (col. 9 lines 34-40). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to replace the clear layer disclosed by Fryar with the clear water vapor permeable layer with a vapor transmission rate greater than 250 grams per square meter per day at a desired humidity of 80% disclosed by Martz in order to insure that the skin of the patient wearing the dressing can breathe properly.

6. Claims 1-10, 12, 13, 18, 20, & 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martz in view of Fryar.

Martz disclose a device (20) with an intermediate member (54) for observation purposes (col. 7-8, lines 66-68 to 1-2), a water vapor permeable, clear, first outer layer (24) with a vapor transmission rate greater than 250 grams per square meter per day at a desired humidity of 80% (col. 9 lines 34-40); & a second water vapor permeable outer layer (32) secured to the first layer (Figures 2 & 4), wherein both layers are coated with an adhesive material (26, 34).

With respect to the preamble of the claims 1-10, 12, 13, 18, 20, & 21: the preamble of the claim does not provide enough any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. ***Kropa v. Robie***, 88 USPQ 478 (CCPA 1951).

Martz does not disclose an intermediate carrier member, containing one or more holes passing through the intermediate carrier member, a plurality of deliquescent salts, contained within the holes in the intermediate carrier member; each of which liquefies at a different predetermined level and contains no dye; a colored absorbent blotting sheet placed against a back side of the intermediate carrier member, which material covers the holes in the intermediate carrier member, the second water vapor permeable outer layer secured to the back side and completely covering the intermediate carrier member, which covers the colored, absorbent sheet material.

Fryar discloses a clinical temperature bandage, comprising an intermediate carrier member (3), containing one or more holes (8) passing through the intermediate carrier member, a plurality of deliquescent salts (6), (such as a dimethyl Itconate, which is a white colored material), contained within the holes in the intermediate carrier member; each of which liquefies at a different predetermined level and contains no dye; a colored (black numbers 7), absorbent blotting sheet (4) secured to the back side of said intermediate carrier member (col. 3 lines 35-36) (Figures 1-6). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to replace the intermediate member disclosed by Martz with the intermediate carrier member disclosed by Fryar with the front side of said intermediate carrier member secured to the water vapor permeable, clear,

first outer layer, & with the second water vapor outer layer secured to the back side of the intermediate carrier member in order to take the direct temperature of the body at an injury site for observation of the higher temperatures indicative of infection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hoshino et al. discloses a composition for external application which describes that many deliquescent salts are white (U.S. Patent App. Pub. 20030026818).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M Reis whose telephone number is (703) 305-4771. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (703) 308-3875. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis
Examiner
Art Unit 2859

Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

tmr
June 4, 2004